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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,758	12/09/2003	Timothy P. Clare	18,856	6550
23556	7590	07/03/2006		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
			EXAMINER POLLICOFF, STEVEN B	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/732,758

Applicant(s)

CLARE ET AL.

Examiner

Steven B. Pollicoff

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 34-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 38-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-43 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-33 and 38-43, drawn to a package of flexible articles, classified in class 206.
- II. Claims 34-37, drawn to a method for forming packaging inserts, classified in class 53.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as plastic molding of the insert. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with James Robinson on 5/16/06 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-33 and 38-43. Affirmation of this election must be made by applicant in replying to this Office action. Group II, claims 34-37, is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the irregular spaced apart support ribs of claims 7 and 21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 20-29 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims cannot depend from future claims. They must be independent or depend from a previous claim. For examination purposes, Examiner interprets claims 20,21,26 and 29 to be dependent from claim 19, claim 22 to depend from 20, claims 23-25 to depend from claim 22, and claims 27 and 28 to depend from claim 26. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,11,12,19,29,30 and 38 rejected under 35 U.S.C. 102(b) as being anticipated by Coles et al., (US Pat 4,427,108).

With respect to claims 1,11,19,29,30 and 38, Coles discloses a package (i.e. corrugated blank [Coles column 2 lines 33-36]) comprising a plurality of flexible articles (Coles column 1 lines 1-2); a structural insert (Fig 1 reference number 1) partially surrounding the flexible articles (Fig 2), the insert comprising a base (Fig 1 reference number 2) with a first and second side edge and two opposed side walls (3,3a) extending from the base to define a generally U-shaped channel for receiving the flexible articles, each side wall extending from the base to a free edge (see top edge of outer face of upward projections at the ends of side walls 3 and 3a) spaced from the base, and each side wall including at least one cut-out (opening between upward projections) extending into the wall from the free edge thereof (the cut-out also defining an undulating pattern in the side walls); and a flexible outer covering (Fig 2; see also column 1 lines 55-56) containing the insert and the flexible articles.

With respect to claim 12, Coles discloses that the flexible articles are contained within at least one package of articles (Fig 2).

Claims 19,20,22-24,26-28 and 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Fournier (US Pat 4,746,010).

With respect to claims 19 and 30, Fournier discloses a package insert with a base/base panel (Fournier Fig 4), two opposed side walls/first and second side wall

panels (12 and 14) extending from the base defining a generally u-shaped channel, each sidewall extending from the base to a free edge spaced from the base (not labeled but see top edge of projections extending upward from side walls 12 and 14) and each side wall including at least one cut-out (not labeled but see space between upward projections) extending into the wall from the free edge.

With respect to claims 20,22-24,31 and 32, Fournier discloses that each side wall of the insert includes a plurality of cut-outs extending into the wall from the free edge thereof to form a plurality of evenly spaced-apart, same shape, support ribs in the shape of a triangle (Fig 6) or a rectangle (Fig 4).

With respect to claims 26-28 and 33, Fournier Fig. 4 clearly discloses that the area defined by the at least one cut-out is greater than 10% and 20% of the total area of the insert and certainly capable of being about 30% of the total area of the insert.

Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Kotliar (US Pat 4,603,825).

With respect to claim 30, Kotliar discloses a blank (Kotliar fig 4) comprising a base panel (fig 1 reference 12) including a first and second side edge (not labeled but see where base panel of blank intersects side walls 14); a first side wall panel (14) joined to the first side edge, the first side wall panel comprising a free edge (top edges of projections in between slots 16) spaced from the first side edge and at least one cut-out (16) extending into the first side wall panel from the free edge; a second side wall panel (14) joined to the second side edge, the second side wall panel comprising a free edge (top edges of projections in between slots 16) spaced from the second side edge

of the base panel, and at least one cut out (16) extending into the second side wall panel from the free edge.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fournier (US Pat 4,746,010).

With respect to claim 25, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to include truncated triangular support ribs, since Applicant has not disclosed that including the truncated triangles solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with triangular support ribs.

With respect to claim 29, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the package insert made of

Art Unit: 3728

corrugated board, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 126 USPQ 416.

Claims 2-10,20-28,31-33 and 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles et al., (US Pat 4,427,108) as applied to claims 1,19,30 and 38 above and further in view of Fournier (US Pat 4,746,010).

With respect to claims 2-6,20-25,31,32 and 39-43, Coles does not disclose that each side wall of the insert includes a plurality of cut-outs extending into the wall from the free edge thereof to form a plurality of evenly spaced-apart support ribs and that each support rib has the same shape (rectangle, triangle, truncated triangle) as an adjacent cut-out. However, Fournier discloses a package for a plurality of articles that includes a plurality of cut-outs extending into the wall from the free edge thereof to form a plurality of evenly spaced-apart support ribs and that each support rib has the same shape (rectangle, triangle, truncated triangle) as an adjacent cut-out (Fig 4 and 6) for holding a plurality of taco shells. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the package of Coles to include a plurality of support ribs with the same shape for the purpose of better holding articles in the insert and reducing the amount of material used in making the insert.

With respect to claims 7 and 21, while Fournier does not disclose that each side wall of the insert includes a plurality of cut-outs extending into the wall from the free edge thereof to form a plurality of irregularly spaced-apart support ribs, it would have

Art Unit: 3728

been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to have the ribs irregularly spaced from each other, since Applicant has not disclosed that such irregular separation solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with evenly spaced ribs as taught by Fournier.

With respect to claims 8-10, 26-28 and 33, Fig 4 of Fournier clearly discloses that the area defined by the at least one cut-out is greater than 10% and 20% of the total area of the insert (at least when compared to the figures of the present invention). Additionally, the Fournier cut-outs are capable of being about 30% of the total area of the insert.

Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles et al., (US Pat 4,427,108) as applied to claim 1, above and further in view of McQueeney et al., (US Pat 5,361,905).

With respect to claims 13-17, while Coles does not disclose that the flexible articles are disposable absorbent articles, training pants, diapers and feminine care products, McQueeney discloses a package for holding articles such as disposable absorbent articles, training pants, diapers and feminine care products (McQueeney column 5 lines 45-48). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the articles of the Coles package with the articles of McQueeney for the purpose of providing a universal package that is suitable to accommodate a variety of different products depending on the demand at the time of packaging.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles et al., (US Pat 4,427,108) as applied to claim 1, above and further in view of Richardson (US Pat 3,918,584).

With respect to claim 18, while Coles does not disclose a flexible outer cover made of a polymer film compression wrapped about the articles and insert, Richardson discloses an insert and flexible articles compression wrapped in a polymeric film to retain the articles in a contiguous relationship during shipping and storage (Richardson column 3 lines 26-35) and to improve stacking strength of multiple packages stacked on one another (column 4 lines 15-19). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Coles package to include a polymeric wrap to better protect the flexible articles during transportation, storage and display before use.

Conclusion

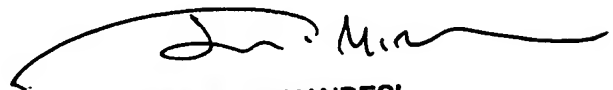
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sheffer (US Pat 5,839,650) discloses a a stackable u-shaped insert for articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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